

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

RETHINK35, et al.,

Plaintiffs,

v.

TEXAS DEPARTMENT OF
TRANSPORTATION (TXDOT),

Defendants.

§
§
§
§
§
§
§
§
§
§

Civ. Case No. 1:24-CV-00092

**DECLARATION OF RACHEL DOUGHTY IN SUPPORT OF PLAINTIFFS' MOTION
TO COMPLETE AND SUPPLEMENT THE ADMINISTRATIVE RECORD AND, IN
THE ALTERNATIVE, REQUEST FOR JUDICIAL NOTICE**

I, Rachel Doughty, do declare and state:

1. If sworn as a witness, I could and would testify to my personal knowledge of the facts set forth herein.

2. Attached hereto as Exhibit A is a true and correct copy of emails exchanged in June and July of 2024 between counsel for Plaintiffs and Defendant for the purpose of meeting and conferring on documents in the administrative record.

3. Attached hereto as Exhibit B is a true and correct copy of emails exchanged in September of 2024 between counsel for Plaintiffs and Defendant for the purpose of meeting and conferring on documents in the administrative record.

4. Attached hereto as Exhibit C is a true and correct copy of the Council on Environmental Quality's "Environmental Justice: Guidance Under the National Environmental Policy Act." This document was downloaded on October 3, 2024 from the U.S. EPA's website at <https://www.epa.gov/environmentaljustice/ceq-environmental-justice-guidance-under-national->

[environmental-policy-act](#). As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

5. Attached hereto as Exhibit D is a true and correct copy of the City of Austin's Imagine Austin Comprehensive Plan (2018). This document was downloaded on October 3, 2024 from the City of Austin's website at <https://speakupaustin.org/imagineaustin>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

6. Attached hereto as Exhibit E is a true and correct copy of the City of Austin's Resolution to Adopt Right to Stay and Right to Return Programs for East Austin (2018). This document was downloaded on October 3, 2024 from the City of Austin's website at <https://services.austintexas.gov/edims/document.cfm?id=292175>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

7. Attached hereto as Exhibit F is a true and correct copy of Non-Hispanic Black Geographic Distribution by Census Tract & Hispanic/Latino Geographic Distribution by Census Tract (City of Austin, 2021). This document contains graphics downloaded on October 3, 2024 from the City of Austin's website at https://www.austintexas.gov/sites/default/files/files/Housing_%26_Planning/Demographics/Census2020/Black_Series.pdf and <https://www.austin>

[texas.gov/sites/default/files/files/Housing_%26_Planning/Demographics/Census2020/Hispanic_Series.pdf](https://www.texas.gov/sites/default/files/files/Housing_%26_Planning/Demographics/Census2020/Hispanic_Series.pdf). As public records found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

8. Attached hereto as Exhibit G is a true and correct copy of the City of Austin’s “Nothing About Us Without Us.” This document was downloaded on October 3, 2024 from the City of Austin’s website at <https://www.austintexas.gov/page/nothing-about-us-without-us>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

9. Attached hereto as Exhibit H is a true and correct copy of Executive Order 13985 (January 20, 2021). This document was downloaded on October 3, 2024 from the White House’s website at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>. Executive orders are the proper subject of judicial notice. *See* Fed. R. Evid. 201(b); *Eye Ctrs. of Am. v. Series Protected Cell I*, 583 F. Supp. 3d 1105, 1114 (M.D. Tenn. 2022); *Santa Cruz Homeless v. Bernal*, 514 F. Supp. 3d 1136, 1139 n.4 (N.D. Cal. 2021). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

10. Attached hereto as Exhibit I is a true and correct copy of the article, Outlier: The Case of Austin’s Declining African-American Population by the Institute for Urban Policy

Research & Analysis at the University of Texas at Austin. This document was downloaded on October 3, 2024 from [content/uploads/2014/08/Austin20AA20pop20policy20brief_FINAL.pdf](#), which website was provided by TXDOT in the final environmental impact statement for the I-35 project (AR34152). Judicial notice also is appropriate for scientific facts, historic facts, news articles, and scientific literature. *See Absolute Activist Value Master Fund v. Devine*, 233 F. Supp. 3d 1297, 1316-1317 (M.D. Fla. 2017); *Benak v. Alliance Capital Mgmt.*, 349 F.Supp.2d 882, 889 n.8 (D.N.J. 2004). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

11. Attached hereto as Exhibit J is a true and correct copy of TXDOT's I-35 Advisory Committee Plan (August 2011). This document was downloaded on October 3, 2024 from TXDOT's website at https://ftp.dot.state.tx.us/pub/txdot-info/my35/advisory_plan.pdf. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

12. Plaintiffs were able to find a copy of TXDOT's I-35 Future Transportation Corridor Planning and Environmental Linkages Study (2014) at <https://ftp.txdot.gov/pub/txdot/my35/capital/projects/sh45n-sh45se/final-report.pdf> and had intended to include a copy as Exhibit K. However, the document cannot be downloaded or printed from the website, and so, a copy does not accompany this declaration. Plaintiffs ask this Court to order TXDOT to provide a copy. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga.

2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

13. Attached hereto as Exhibit L is a true and correct copy of TXDOT's Technical Report - Statewide On-Road Greenhouse Gas Emissions Analysis and Climate Change Assessment (2018). This document was downloaded on October 4, 2024 from TXDOT's website at <https://ftp.txdot.gov/pub/txdot/get-involved/sat/loop-1604-from-sh16-i-35/091020-greenhouse-gas-report.pdf>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

14. Attached hereto as Exhibit M is a true and correct copy of TXDOT's Running Emission Rates Table, downloaded on October 3, 2024 from TXDOT's Air Quality Toolkit at <https://www.txdot.gov/business/resources/environmental/compliance-toolkits/air-quality.html>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

15. Attached hereto as Exhibit N is a true and correct copy of TXDOT's Idling Emission Rates Table, downloaded on October 3, 2024 from TXDOT's Air Quality Toolkit at <https://www.txdot.gov/business/resources/environmental/compliance-toolkits/air-quality.html>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To

the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

16. Attached hereto as Exhibit O is a true and correct copy of TXDOT's Carbon Monoxide Traffic Air Quality Analysis Rates Table, downloaded on October 3, 2024 from TXDOT's Air Quality Toolkit at <https://www.txdot.gov/business/resources/environmental/compliance-toolkits/air-quality.html>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

17. Attached hereto as Exhibit P is a true and correct copy of the article "Austin Restricted: Progressivism, Zoning, Private Racial Covenants, and the Making of a Segregated City" (2012). This document was downloaded on October 3, 2024 from <https://repositories.lib.utexas.edu/handle/2152/21232>, which website was provided by TXDOT in the final environmental impact statement for the I-35 project (AR34155). Judicial notice also is appropriate for scientific facts, historic facts, news articles, and scientific literature. *See Absolute Activist Value Master Fund v. Devine*, 233 F. Supp. 3d 1297, 1316-1317 (M.D. Fla. 2017); *Benak v. Alliance Capital Mgmt.*, 349 F.Supp.2d 882, 889 n.8 (D.N.J. 2004). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

18. Attached hereto as Exhibit Q is a true and correct copy of the Federal Highway Administration's Environmental Justice Reference Guide (2015). This document was downloaded on October 3, 2024 from the Department of Transportation's website at https://www.fhwa.dot.gov/environment/environmental_justice/publications/reference_guide_201

[5/fhwahep15035..pdf](#). As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

19. Attached hereto as Exhibit R is a true and correct copy of “Uprooted: Residential Displacement in Austin’s Gentrifying Neighborhoods and What Can Be Done About It” (2018). This report, which was commissioned by the City of Austin, was downloaded on October 3, 2024 from <https://law.utexas.edu/clinics/2018/09/18/uprooted-residential-displacement/>. Judicial notice also is appropriate for scientific facts, historic facts, news articles, and scientific literature. *See Absolute Activist Value Master Fund v. Devine*, 233 F. Supp. 3d 1297, 1316-1317 (M.D. Fla. 2017); *Benak v. Alliance Capital Mgmt.*, 349 F.Supp.2d 882, 889 n.8 (D.N.J. 2004). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

20. Attached hereto as Exhibit S is a true and correct copy of the I-35 Corridor Austin, Texas: A ULI Advisory Services Panel Report. The document was downloaded on October 4, 2024 from https://downtownaustin.com/wp-content/uploads/2020/05/ULI-ASP_Report_Austin_I-35_FINAL.pdf, which website was provided by TXDOT in the final environmental impact statement for the I-35 project (AR34156). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate as the document’s accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

21. Attached hereto as Exhibit T is a true and correct copy of Texas A&M Transportation Institute’s Mobility Investment Priorities Project (2013). This document, which was prepared for the Texas Transportation Commission and 83rd Texas Legislature, was

downloaded on October 3, 2024 from <https://mobility.tamu.edu/mip/#:~:text=Download%3A-.Full%20report,-Updates%20the%20key>. To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate as the document's accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

22. Attached hereto as Exhibit U is a true and correct copy of the City of Austin's Amendment #2 to Final Project Plan and Reinvestment Zone Financing Plan. To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate as the document's accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

23. Attached hereto as Exhibit V is a true and correct copy of a news release entitled "EPA to Reexamine Health Standards for Harmful Soot that Previous Administration Left Unchanged" (June 10, 2021). This document was downloaded on October 4, 2024 from the U.S. EPA's website at <https://www.epa.gov/newsreleases/epa-reexamine-health-standards-harmful-soot-previous-administration-left-unchanged>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

24. Attached hereto as Exhibit W is a true and correct copy of a news release entitled "EPA Proposes to Strengthen Air Quality Standards to Protect the Public from Harmful Effects of Soot" (January 6, 2023). This document was downloaded on October 4, 2024 from the U.S. EPA's website at <https://www.epa.gov/newsreleases/epa-proposes-strengthen-air-quality-standards-protect-public-harmful-effects-soot#:~:text=EPA's%20proposal%20will%20specifically%20take,for%20all%2C%E2%80%9D%20said%20Dr>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS*

Capital, LLC v. Carr, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

25. Attached hereto as Exhibit X is a true and correct copy of the U.S. EPA's Supplement to the 2019 Integrated Science Assessment for Particulate Matter (May 2022). This document was downloaded on October 4, 2024 from the U.S. EPA's website at https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=544706. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

26. Attached hereto as Exhibit Y is a true and correct copy of an interactive map showing the habitat of the Texas fatmucket. This map was downloaded on October 4, 2024 from the U.S. Fish & Wildlife Service's website at <https://www.fws.gov/species/texas-fatmucket-lampsilis-bracteata/map>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

27. Attached hereto as Exhibit Z is a true and correct copy of the U.S. EPA's Final Guidance for Consideration of Environmental Justice in Clean Air Act 309 Reviews (July 1999). This document was downloaded on October 4, 2024 from the U.S. EPA's website at https://www.epa.gov/sites/default/files/2014-08/documents/enviro_justice_309review.pdf. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the

extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

28. Attached hereto as Exhibit AA is a true and correct copy of the City of Austin's comment, dated December 29, 2020, on the I-35 Capital Express Central project. This document was downloaded on October 4, 2024 from the City of Austin's website at <https://www.austintexas.gov/sites/default/files/files/2%20-%20COA%20Department%20Comments%20for%20I-35%20Central%20Express%20Scoping%2012-29-20.pdf>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

29. Attached hereto as Exhibit BB is a true and correct copy of an Austin Resolution 202310-045 (October 19, 2023). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate as the document's accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

30. Attached hereto as Exhibit CC is a true and correct copy of a slideshow entitled "Austin and the EPA's PM2.5 NAAQS" by the City of Austin Environmental Commission (June 7, 2023). This document was downloaded on October 4, 2024 from the City of Austin's website at <https://services.austintexas.gov/edims/document.cfm?id=409664>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

31. Attached hereto as Exhibit DD is a true and correct copy of Travis County, Commissioners Court-Approved Letter to Texas Department of Transportation (February 28,

2023; Sept. 26, 2023). The document was downloaded from Travis County's website portal at <https://traviscotx.portal.civicclerk.com/event/2832/files/report/11833>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

32. Attached hereto as Exhibit EE is a true and correct copy of a joint statement on I-35 issued by the Austin City Council on July 31, 2023. The document was downloaded on October 4, 2024 from the City of Austin Council's website message board at <https://austincouncilforum.org/viewtopic.php?p=4124&sid=96946e28db7d989562200852bce88a49#p4124>. As a public record found on a government website, its accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate.

33. Attached hereto as Exhibit FF is a true and correct copy of 88 FR 5558 (January 23, 2023). To the extent the Court does not augment the administrative record with the document, judicial notice of the contents of the Federal Register is appropriate. 44 USCS § 1507; *Longo v. Seminole Indian Casino-Immokalee*, 813 F.3d 1348, 1349 n.2 (11th Cir. 2016).

34. Attached hereto as Exhibit GG is a true and correct copy of 89 FR 16202 (March 6, 2024). To the extent the Court does not augment the administrative record with the document, judicial notice of the contents of the Federal Register is appropriate. 44 USCS § 1507; *Longo v. Seminole Indian Casino-Immokalee*, 813 F.3d 1348, 1349 n.2 (11th Cir. 2016).

35. Attached hereto as Exhibit HH is a true and correct copy of an email sent to TXDOT counsel for the purpose of meeting and conferring on documents in the administrative record. As of the time of filing this motion, Defendant's counsel had not responded to the email.

36. Attached hereto as Exhibit II is a true and correct copy of the Title VI complaint in *People in Defense of Earth and Her Resources et al. v. TXDOT et al.* To the extent the Court does not augment the administrative record with the document, judicial notice is appropriate as the document's accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

I make this declaration under penalty of perjury under the laws of the United States of America, executed this 10th day of October, 2024, in Berkeley, California.

DATED: October 10, 2024

Respectfully Submitted,

/s/ Rachel S. Doughty
Rachel S. Doughty